

Article 5F.

Certain Machinery and Equipment.

**§ 105-187.50. (Repealed effective July 1, 2018) Definitions.**

The definitions in G.S. 105-164.3 apply in this Article. (2001-347, s. 2.17; 2007-323, s. 31.22(a); 2009-451, s. 27A.3(v); 2010-91, s. 5; 2017-57, s. 38.8(a).)

**§ 105-187.51. (Repealed effective July 1, 2018) Tax imposed on mill machinery.**

(a) Scope. – A privilege tax is imposed on the following persons:

- (1) A manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State. A manufacturing industry or plant does not include the following:
  - a. A delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises.
  - b. A production company.
- (2) A contractor or subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a manufacturing industry or plant.
- (3) A subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.

(b) Rate. – The tax is one percent (1%) of the purchase price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars (\$80.00) per article. As used in this section, the term "accessories" does not include electricity. (2001-347, s. 2.17; 2005-435, s. 56(a); 2010-147, s. 2.3; 2016-94, s. 38.2(d); 2017-57, s. 38.8(a).)

**§ 105-187.51A:** Repealed by Session Laws 2007-397, s. 12(d) effective July 1, 2010.

**§ 105-187.51B. (Repealed effective July 1, 2018) Tax imposed on machinery, equipment, and other tangible personal property purchased by certain companies.**

(a) Tax. – A privilege tax is imposed on the following:

- (1) A major recycling facility that purchases any of the following tangible personal property for use in connection with the facility:
  - a. Cranes, structural steel crane support systems, and foundations related to the cranes and support systems.
  - b. Port and dock facilities.
  - c. Rail equipment.
  - d. Material handling equipment.
- (2) A company primarily engaged at the establishment in research and development activities in the physical, engineering, and life sciences included in industry 54171 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:
  - a. Is capitalized by the company for tax purposes under the Code.

- b. Is used by the company at the establishment in the research and development of tangible personal property.
  - c. Would be considered mill machinery or mill machinery parts or accessories under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.
- (3) A company primarily engaged at the establishment in software publishing activities included in industry group 5112 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:
  - a. Is capitalized by the company for tax purposes under the Code.
  - b. Is used by the company at the establishment in the research and development of tangible personal property.
  - c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used in the research and development of tangible personal property manufactured by the industry or plant.
- (4) A company primarily engaged at the establishment in industrial machinery refurbishing activities included in industry group 811310 of NAICS and that purchases equipment or an attachment or repair part for equipment that meets all of the following requirements:
  - a. Is capitalized by the company for tax purposes under the Code.
  - b. Is used by the company at the establishment in repairing or refurbishing tangible personal property.
  - c. Would be considered mill machinery under G.S. 105-187.51 if it were purchased by a manufacturing industry or plant and used by the industry or plant to manufacture tangible personal property.
- (5) A company located at a ports facility for waterborne commerce that purchases any of the following:
  - a. Machinery and equipment that is used at the facility to unload or to facilitate the unloading or processing of bulk cargo to make it suitable for delivery to and use by manufacturing facilities.
  - b. Parts, accessories, or attachments used to maintain, repair, replace, upgrade, improve, or otherwise modify such machinery and equipment.
- (6) A person other than a person subject to tax under subdivision (1) of this subsection that gathers and obtains ferrous metals, nonferrous metals, and items that have served their original economic purpose and that converts them by processes, including sorting, cutting, classifying, cleaning, baling, wrapping, shredding, or shearing into a new or different product for sale consisting of prepared grades that purchases equipment, or an attachment or repair part for the equipment, that meets all of the following requirements:
  - a. Is capitalized by the person for tax purposes under the Code.
  - b. Is used by the person in a conversion process described in this subdivision.
  - c. Is not a motor vehicle or an attachment or repair part for a motor vehicle.

- (7) A company primarily engaged at the establishment in processing tangible personal property for the purpose of extracting precious metals, as defined in G.S. 66-406, to determine the value for potential purchase that purchases equipment, or an attachment or repair part for the equipment, that meets all of the following requirements:
    - a. Is capitalized by the company for tax purposes under the Code.
    - b. Is used by the company in the process described in this subdivision.
  - (8) A company (i) that is engaged in the fabrication of metal work, (ii) that has annual gross receipts, including the gross receipts of all related persons as defined in G.S. 105-163.010, from the fabrication of metal work of at least eight million dollars (\$8,000,000), and (iii) that purchases equipment, or an attachment or repair part for equipment, that meets all of the following requirements:
    - a. Is capitalized by the company for tax purposes under the Code.
    - b. Is used by the company at the establishment in the fabrication or manufacture of metal products or used by the company to create equipment for the fabrication or manufacture of metal products.
- (b) Rate. – The tax is one percent (1%) of the purchase price of the equipment or other tangible personal property. The maximum tax is eighty dollars (\$80.00) per article. (2005-276, s. 33.21; 2006-66, s. 24.9(a); 2006-196, s. 12; 2007-323, s. 31.7(a); 2007-527, s. 13(a); 2008-107, s. 28.21(a); 2011-302, s. 1; 2013-414, s. 46; 2016-94, s. 38.2(a), (b); 2016-123, ss. 11.1, 11.3(a); 2017-57, s. 38.8(a).)

**§ 105-187.51C. (Expiring for sales occurring on or after July 1, 2015 and repealed effective July 1, 2018) Tax imposed on datacenter machinery and equipment.**

(a) Tax. – A privilege tax is imposed on the owner of a datacenter that meets the requirements of subsection (a1) of this section and that purchases machinery or equipment to be located and used at the datacenter that is capitalized for tax purposes under the Code and is used either:

- (1) For the provision of datacenter services, including equipment cooling systems for managing the performance of the datacenter property; hardware for distributed and mainframe computers and servers; data storage devices; network connectivity equipment and peripheral components and systems.
- (2) For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

(a1) Requirements. – The Secretary of Commerce must certify that the datacenter meets all of the following requirements:

- (1) The investment requirements of this subdivision. The level of investment required by this subdivision must consist of private funds that have been or will be made in real and tangible personal property for the facility within five years of the date on which the first property investment is made by the owner of the facility.
  - a. For facilities located in a development tier one area, at least one hundred fifty million dollars (\$150,000,000).

b. For facilities located in a development tier two area or a development tier three area, at least two hundred twenty-five million dollars (\$225,000,000).

(2) The wage standard requirements of G.S. 105-129.83.

(3) The health insurance requirements of G.S. 105-129.83.

(a2) Second Datacenter. – A privilege tax is imposed on an owner of a datacenter that is subject to tax under subsection (a) of this section, constructs a second datacenter, and purchases machinery or equipment to be located and used at that datacenter. As used in this subsection, the owner of a datacenter includes an entity that is owned by or under common control with the owner of a datacenter subject to tax under subsection (a) of this section. The tax applies only if the second datacenter meets the following requirements and the machinery or equipment that is purchased is capitalized for tax purposes under the Code and is used for one of the purposes listed in subsection (a) of this section:

(1) The Secretary of Commerce certifies that an investment of private funds of at least seventy-five million dollars (\$75,000,000) has been or will be made in real and tangible personal property for the facility within five years after the facility subject to tax under subsection (a) of this section is placed into service and that the datacenter meets the requirements in subsection (a1) of this section, other than the minimum investment amount in that subsection.

(2) The two datacenters are linked through a fiber-optic connection or a similar connection.

(3) The datacenters are placed in service within five years of each other.

(a3) Contractor Option. – A contractor or subcontractor that is subject to this subsection may elect to pay tax on its purchases of machinery and equipment described in subsection (a) of this section at the rate set in this section instead of the rate set in Article 5 of this Chapter. To make this election, a contractor or subcontractor must register with the Secretary for payment of tax under this section. The following contractors and subcontractors are subject to this section:

(1) A contractor that purchases the machinery and equipment for use in the performance of a contract with the owner of a datacenter subject to tax under this section.

(2) A subcontractor that purchases the machinery and equipment for use in the performance of a contract with a general contractor that has a contract with the owner of a datacenter subject to tax under this section.

(b) Rate and Scope. – The tax is one percent (1%) of the sales price of the eligible equipment and machinery. The maximum tax is eighty dollars (\$80.00) per article. The tax does not apply to equipment and machinery of an eligible Internet datacenter that is exempt from sales tax under G.S. 105-164.13(55).

(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been

due. For all other forfeitures, interest is computed from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(d) Sunset. – This section expires for sales occurring on or after July 1, 2015. (2007-323, s. 31.22(b); 2009-445, s. 17; 2010-91, ss. 6, 7; 2011-330, ss. 22, 24; 2017-57, s. 38.8(a).)

**§ 105-187.51D. (Repealed effective July 1, 2018) (Expiring for sales occurring on or after July 1, 2018) Tax imposed on machinery at large manufacturing and distribution facility.**

(a) Definition. – For the purposes of this section, a "large manufacturing and distribution facility" is a facility that is to be used primarily for manufacturing or assembling products and distributing finished products for which the Secretary of Commerce makes a certification that an investment of private funds of at least eighty million dollars (\$80,000,000) has been or will be made in real and tangible personal property for the facility within five years after the date on which the first property investment is made and that the facility will achieve an employment level of at least 550 within five years after the date the facility is placed into service and maintain that minimum level of employment throughout its operation.

(b) Tax. – A privilege tax is imposed on a large manufacturing and distribution facility that purchases mill machinery, distribution machinery, or parts or accessories for mill machinery or distribution machinery for storage, use, or consumption in this State. The tax is one percent (1%) of the purchase price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars (\$80.00) per article. As used in this section, the term "accessories" does not include electricity.

(c) Forfeiture. – If the required level of investment or employment to qualify as [a] large manufacturing and distribution facility is not timely made, achieved, or maintained, then the rate provided under this section is forfeited. If the rate is forfeited due to a failure to timely make the required investment or to timely achieve the minimum required employment level, then the rate provided under this section is forfeited on all purchases. If the rate is forfeited due to a failure to maintain the minimum required employment level once that level has been achieved, then the rate provided under this section is forfeited for those purchases occurring on or after the date the taxpayer fails to maintain the minimum required employment level.

A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. Interest is computed from the date the sales or use tax would otherwise have been due. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A

taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(d) Sunset. – This section expires for sales occurring on or after July 1, 2018. (2011-302, s. 2; 2016-94, s. 38.2(e); 2017-57, s. 38.8(a).)

**§ 105-187.52. (Repealed effective July 1, 2018) Administration.**

(a) Administration. – The privilege taxes imposed by this Article are in lieu of the State use tax. Except as otherwise provided in this Article, the collection and administration of these taxes is the same as the State use tax imposed by Article 5 of this Chapter.

(b) Credit. – A credit is allowed against the tax imposed by this Article for the amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax due and paid to another state or for the amount of sales and use tax paid to this State. The credit allowed by this subsection does not apply to tax paid to another state that does not grant a similar credit for the privilege tax paid in North Carolina.

(c) Exemption. – State agencies are exempted from the privilege taxes imposed by this Article. The exemption in G.S. 105-164.13(62) does not apply to an item used to maintain or repair tangible personal property pursuant to a service contract exempt from tax under G.S. 105-164.13(61a)a. (2001-347, s. 2.17; 2005-276, s. 33.22; 2006-162, s. 11; 2007-527, s. 14; 2011-330, s. 25(b); 2013-414, s. 16; 2015-6, s. 2.23(b); 2017-57, s. 38.8(a); 2018-5, s. 38.5(r).)

**§ 105-187.53. (Repealed effective July 1, 2018) Commercial logging items.**

This Article does not apply to an item that is exempt from sales and use tax under G.S. 105-164.13(4f). (2006-19, s. 2; 2017-57, s. 38.8(a).)

**§ 105-187.54. Reserved for future codification purposes.**

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